



DIVISION OF DEVELOPMENTAL DISABILITIES
Olympia, Washington

TITLE: ATTORNEY GENERAL ADVICE AND REPRESENTATION POLICY 2.02

Authority: Chapter 4.92 RCW

PURPOSE

This policy describes the process for requesting assistance from the Office of the Attorney General (AGO): (a) for legal advice; (b) for assistance with or in a fair hearing; or (c) in a lawsuit where you are a named-defendant regarding alleged acts or omissions as an employee of the Division of Developmental Disabilities (DDD). This policy is intended to eliminate duplicate requests, coordinate staff efforts, and facilitate communication of AGO responses to all appropriate division staff.

SCOPE

This policy applies to all DDD organizational units.

POLICY

A. Requests for Legal Advice Unrelated to Client Appeals

1. DDD headquarters staff, regional administrators (RA), field services administrators (FSA), and residential habilitation center (RHC) superintendents can contact their assigned Assistant Attorney General (AAG) directly for verbal consultation or to request advice in writing. If analysis of specific documents is anticipated that are not readily available outside DDD, requestors should provide such documents at the outset to the assigned AAG in order to facilitate timely responses.
2. Prior to contacting an AAG for verbal consultation or to request advice in writing, DDD regional staff and RHC staff who are not subject to A.1 above should first consult with their RA, FSA, or RHC superintendent or assistant superintendent. If following such consultation it is determined that AAG involvement is necessary, the assigned AAG can be contacted directly.

This procedure may be altered by prior agreement with the assigned AAG. If analysis of specific documents is anticipated that are not readily available outside DDD, requestors should provide such documents at the outset to the assigned AAG in order to facilitate timely responses.

3. If any DDD staff believes that immediate AAG involvement is necessary and that insufficient time is available to allow for the prior consultation anticipated in A.2 above, the staff person should contact an AAG immediately for the necessary consultation.
4. Prior to contacting an AAG for verbal consultation or to request advice in writing on guardianship cases or issues, including the establishment or modification of guardianships, DDD regional staff and RHC staff should first consult with their regional guardianship coordinator. If following such consultation it is determined that AAG involvement is necessary, the AAG assigned to cover guardianship matters can be contacted directly. This procedure may be altered by prior agreement with the assigned AAG. If immediate AAG involvement is necessary, refer to A.3 above.

B. Requests for Legal Advice Related to Client Appeals/Fair Hearings

The protocol for the involvement of the AAGs in regional fair hearings is described in Attachment A of this policy.

C. Notification/Representation in a Lawsuit

1. If a DDD employee is named in a lawsuit arising from his or her job duties, the employee should contact the RA or FSA and the assigned AAG immediately.
2. If a division employee has reason to believe that a lawsuit may be filed against them or the department, he or she should contact the RA, the assigned AAG, and the division's Torts Manager to determine what documentation they should begin collecting, if any.

SUPERSESION

DDD Policy 2.02
Issued November 16, 2005

DDD Policy 2.02
Issued April 18, 2002

DDD Policy 2.02
Issued February 13, 2002

DDD Policy 2.02
Issued November 21, 1994

Policy Directive 113
Issued June 23, 1978

Approved: /s/ Linda Rolfe
Director, Division of Developmental Disabilities

Date: February 14, 2006

ATTACHMENT A

PROTOCOL FOR INVOLVEMENT OF AAGs IN REGIONAL FAIR HEARINGS

Revised 2/13/06

While the role of DDD's assistant attorneys general is to provide legal advice and representation to the division, their availability to represent DDD in regional fair hearings is limited to significant cases in which AAG representation is deemed necessary. The AAG will decide what level of involvement is needed and/or available (i.e., one-time consultation, review of case preparation, assistance with writing of legal motions or petitions for reviews, or assistance and representation at the hearing).

The following are guidelines for consulting with Central Office staff about DDD fair hearings, and for determining when it is appropriate to request AAG involvement.

- A. Except for cases in which AGO staff has agreed to represent DDD at the fair hearing, DDD regional staff will have primary responsibility for coordinating and preparing the case and representing the department at the hearing. When assuming this role, DDD staff can consult with an AAG regarding substantive or procedural issues in particular cases, consistent with this protocol.

If the region believes it can handle the fair hearing without AAG assistance, they are encouraged to do so. AAG assistance can be requested at any stage of the administrative hearing process, including during appeals to department review judges.

- B. For cases in which an AAG has agreed to represent DDD at a fair hearing, the attorney will work collaboratively with DDD staff in preparing the case for hearing. Generally, AAG representation at fair hearings will be limited to cases involving complex disputes, cases with large fiscal implications, significant cases in which the appellant has an attorney, or cases involving issues that could have broader legal implications for the division.
- C. When requesting representation from an AAG, the following steps should be taken:
1. Consult other regional staff with knowledge of the program/decision in dispute. If needed, AAG assistance can be requested by the Fair Hearing Coordinator, the Field Services Administrator, or the Regional Administrator.
 2. Prior to calling the AAG, send an email to the AAG (with a copy to the Central Office Fair Hearing Coordinator) with basic information such as:
 - Which RCWs, WACs, or policies are involved with the appeal?
 - What is the basis for the department's decision?
 - What is the basis, if any, for the appellant's appeal?
 - Which staff need to be involved in the hearing?
 - What is at stake in the case? What are the implications of an adverse decision?

3. Consult with the Central Office Fair Hearings Coordinator on WAC-related issues and defense strategy consultation. In cases where the appellant is represented by an attorney, the regions can contact the AAG directly to discuss the need for AAG involvement.
 4. When possible, the AAG will draft the motions and appeals.
- D. Regional Fair Hearing Coordinators are expected to participate in the AAG's monthly Fair Hearings conference call and the quarterly ADSA Fair Hearing Training .to stay informed on current issues/procedures.